

2011 DRAFTING REQUEST

Bill

Received: **12/21/2010**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Erik Severson (608) 267-2365**

By/Representing: **AJ**

May Contact:

Drafter: **tkuczens**

Subject: **Courts - torts**
Courts - evidence

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Severson@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Statements of apology inadmissible in tort action

Instructions:

redraft 09 AB 710

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 12/21/2010 tkuczens 12/22/2010	kfollett 01/04/2011		_____			
/1	tkuczens 04/08/2011	kfollett 04/08/2011	rschluet 01/05/2011	_____	sbasford 01/05/2011	cduerst 03/01/2011	
/2			rschluet 04/11/2011	_____	lparisi 04/11/2011	lparisi 04/11/2011	

FE Sent For:

None

<END>

2011 DRAFTING REQUEST

Bill

Received: **12/21/2010**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **John Nygren (608) 266-2343**

By/Representing: **Waylon**

May Contact:

Drafter: **tkuczens**

Subject: **Courts - torts**
Courts - evidence

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

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/?	phurley 12/21/2010 tkuczens 12/22/2010	kfollett 01/04/2011 <i>12/21/10</i> <i>4/18</i>					
/1		rschluet 01/05/2011			sbasford 01/05/2011	cdurst 03/01/2011	

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By/Representing: **Waylon**

May Contact:

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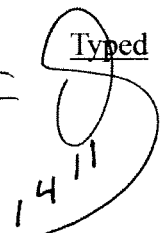
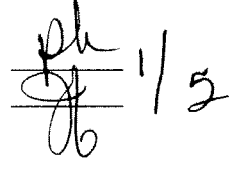
Topic:

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/?	phurley	11/5f 11/9					

FE Sent For:

<END>

Kuczenski, Tracy

From: Hurlburt1, Waylon
Sent: Wednesday, December 22, 2010 1:49 PM
To: Kuczenski, Tracy
Subject: RE: Bill Draft Request

Tracy,

*April 7, 2011
T. call from AS, Rep. Severson
See authorization*

Please use the 2005 version of this bill and not the 2009 version.

In other words, please draft 2005 AB 1021 instead of 2009 AB 710.

<http://legis.wisconsin.gov/2005/data/AB1021hst.html>

Thanks,

Waylon

From: Hurley, Peggy
Sent: Tuesday, December 21, 2010 9:31 AM
To: Hurlburt1, Waylon
Cc: Kuczenski, Tracy
Subject: RE: Bill Draft Request

Hi Waylon,

On second thought, Tracy will be drafting this request. Sorry for the confusion!

Peggy

From: Hurlburt1, Waylon
Sent: Tuesday, December 21, 2010 9:20 AM
To: Hurley, Peggy
Subject: RE: Bill Draft Request

Thanks Peggy.

From: Hurley, Peggy
Sent: Tuesday, December 21, 2010 9:19 AM
To: Hurlburt1, Waylon
Subject: RE: Bill Draft Request

Hi Waylon,

I can redraft this for you. I will be sharing the "courts" area with Tracy Kuczenski this session.

Peggy

12/22/2010

2005 - 2006 LEGISLATURE

2011-2012

0769/1
LRB-4134/T
RPN:kjf/h
TKK

2005 ASSEMBLY BILL 1021

2011

RMR
d-note

12/22/10

February 14, 2006 - Introduced by Representatives GIELOW, ALBERS, BIES, HAHN, KRAWCZYK, JESKEWITZ, SHILLING, STRACHOTA, VAN ROY, VOS and GUNDRUM, cosponsored by Senators ROESSLER, GROTHMAN, A. LASEE, OLSEN and REYNOLDS. Referred to Committee on Judiciary.

Regen

- 1 AN ACT to create 904.14 of the statutes; relating to: inadmissibility of a
2 statement of apology or condolence by a health care provider.

Analysis by the Legislative Reference Bureau

Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of measure taken after damage occurred that would have made the damage less likely is not admissible to prove negligence or culpable conduct in connection with the damage. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

an event *remedial* *event* *event*

This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 904.14 of the statutes is created to read:
4 **904.14 Inadmissibility of statement by health care provider of apology**
5 **or condolence. (1) In this section:**

ASSEMBLY BILL 1021

SECTION 1

1 (a) "Health care provider" has the meaning given in s. 153.01 (4t). ✓

2 (b) "Relative" has the meaning given in s. 146.34 (1) (j). ✓

3 (2) A statement, gesture, or ^{the} conduct of a health care provider or a health care ✓
4 provider's employee or agent, that expresses apology, benevolence, compassion,
5 condolence, fault, liability, responsibility, or sympathy to a patient or to his or her
6 relative or representative is not admissible into evidence or subject to discovery in
7 any civil action or administrative hearing regarding the health care provider as
8 evidence of liability or as an admission against interest.

9 **SECTION 2. Initial applicability.**

10 (1) This act first applies to statements, gestures, or conduct that occur on the
11 effective date of this subsection. ✓

12 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0769/1dn

TKK: *kgf*

Date

Rep. Nygren:

✓

This is a redraft of 2005 Assembly Bill 1021.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0769/1dn
TKK:kjf:rs

January 5, 2011

Rep. Nygren:

This is a redraft of 2005 Assembly Bill 1021.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov

Duerst, Christina

From: Froelich, Brooke
Sent: Tuesday, March 01, 2011 8:31 AM
To: LRB.Legal
Subject: Draft Review: LRB 11-0769/1 Topic: Statements of apology
inadmissible in tort action

Please Jacket LRB 11-0769/1 for the ASSEMBLY.

Kuczenski, Tracy

From: OBrien, Kyle
Sent: Thursday, April 07, 2011 10:44 AM
To: Kuczenski, Tracy
Cc: Scholz, AJ
Subject: Authorization

Please allow Rep. Severson's office to revise the bill draft LRB 0769/1.

Thank you,

- Kyle

Kyle O'Brien

Office of State Representative John Nygren
Research Assistant
Phone: (608) 266-2344
Email: kyle.obrien@legis.wi.gov

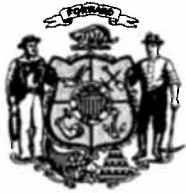
Per A.J. (Rep. Severson's office) X ~~72365~~ 72365

→ add "remorse" to p. 2, line 5

→ change definition of health care provider to reference

"s. 146.81(1) and includes an ambulatory surgery center"

→ change x-ref to definition of relative found at
s. 106.50(1m)(g)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0769/2

TKK:kjf:rs

RMNR

2011 BILL

4/7/11
soon

Regen

1 AN ACT ~~to create~~ 904.14 of the statutes; **relating to:** inadmissibility of a
2 statement of apology or condolence by a health care provider.

Analysis by the Legislative Reference Bureau

Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of remedial measures taken after an event occurred that would have made the event less likely is not admissible to prove negligence or culpable conduct in connection with the event. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

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BILL**SECTION 1**

146.81(1) and includes an ambulatory surgery center

① (a) "Health care provider" has the meaning given in s. 153.01 (4t)

② (b) "Relative" has the meaning given in s. 146.34 (1) (j).

3 (2) A statement, gesture, or the conduct of a health care provider or a health
4 care provider's employee or agent, that expresses apology, benevolence, compassion,
5 condolence, fault, liability, ^{remorse,} responsibility, or sympathy to a patient or to his or her
6 relative or representative is not admissible into evidence or subject to discovery in
7 any civil action or administrative hearing regarding the health care provider as
8 evidence of liability or as an admission against interest.

SECTION 2. Initial applicability.

10 (1) This act first applies to statements, gestures, or conduct that occur on the
11 effective date of this subsection.

12 (END)

Kuczenski, Tracy

From: Kuczenski, Tracy
Sent: Monday, June 27, 2011 10:46 AM
To: Esser, Jennifer; Scholz, AJ
Cc: Reader, Chris; Sappenfield, Anne; Miller, Steve
Subject: SB 103 / AB 147 Corrected Copies

Hi Jen and AJ –

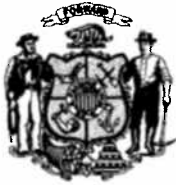
As we discussed this morning, I am preparing Corrected Copies of SB 103 and AB 147 to correct a substantive omission from the analysis of these companion bills.

Under the analysis as it currently appears on the introduced bills, only three types of statements and conduct are listed: apology, condolence, or sympathy. These three types of statements and conduct, however, are not entirely representative of the types of statements, gestures, or conduct that would be made inadmissible into evidence or subject to discovery under the bill. In the Corrected Copies, I have modified the second paragraph of the analysis to add the full complement of statements and conduct, as enumerated on page 2, lines 5 and 6 of the bills, which would be made inadmissible under the bill.

Please let me know if you have any questions.

Thank you,
Tracy

Tracy K. Kuczenski
Legislative Attorney
Wisconsin Legislative Reference Bureau
tracy.kuczenski@legis.wisconsin.gov
(608) 266-9867



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0769/2

TKK:kjf:rs

CORRECTED COPY

2011 ASSEMBLY BILL 147

Per
CSS
06-27-2011

May 23, 2011 - Introduced by Representatives SEVERSON, NYGREN, STRACHOTA, KAUFERT, BEWLEY, BIES, BROOKS, JACQUE, RIPP, SPANBAUER, TAUCHEN and THIESFELDT, cosponsored by Senators GALLOWAY, COWLES, DARLING, HOLPERIN, SCHULTZ and WANGGAARD. Referred to Committee on Health.

- 1 AN ACT *to create* 904.14 of the statutes; **relating to:** inadmissibility of a
2 statement of apology or condolence by a health care provider.

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Under current law, certain types of evidence are not allowed to be admitted in a court action for various policy reasons. For example, evidence of remedial measures taken after an event occurred that would have made the event less likely is not admissible to prove negligence or culpable conduct in connection with the event. As another example, no written or oral communication relating to a dispute in mediation is admissible or subject to discovery in any judicial proceeding or administrative action.

benevolence, compassion
This bill provides that a statement or conduct of a health care provider that expresses apology, condolence, or sympathy to a patient or patient's relative or representative is not admissible into evidence or subject to discovery in any civil action or administrative hearing regarding the health care provider as evidence of liability or as an admission against interest.

fault, liability, remorse, responsibility
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 3 SECTION 1. 904.14 of the statutes is created to read:
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